IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLOW BAY ASSOCIATES, LLC, a Nevada limited liability company,	)	
Plaintiff,	)	
v.	)	C.A. No. 00-99-GMS
IMMUNOMEDICS INC., a Delaware corporation, et al.,	)	
Defendant.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On February 17, 2000, the plaintiff, Willow Bay Associates, LLC ("Willow Bay") filed a complaint in this court alleging that the defendant, Immonomedics, had breached its contract (a "non-circumvention" or "reciprocal confidentiality agreement") with Willow Bay. The court entered a schedule setting the dispositive motion deadline at February 15, 2001. The Pre-Trial conference was held on June 16, 2001. By this time, the dispositive motion deadline had lapsed, and the court directed the parties not to file any dispositive motions. Thus, no dispositive motions were filed.

The court scheduled the two day bench trial for Thursday, April 18, 2002 and Friday, April 19, 2002.[1] On Monday, April 15, 2002, the defendant wrote a letter-brief to the court which the defendant maintains was intended to bring a newly discovered case, *Bronner v. Park Place Entertainment Corp.*, 137 F. Supp. 2d 306 (S.D.N.Y. 2001), to the court's attention. However, the

[1] The trial was rescheduled twice to accommodate the schedules of the court and the parties.

letter also asked the court to dismiss the case pursuant to the New York statute of frauds.[2] The plaintiff responded to the motion to dismiss on the next day, Tuesday, April 16, 2002. The plaintiff contended that the "motion to dismiss" should not be granted because, *inter alia*, "a whole host of factual issues" remained to be resolved by a jury.

The court held a telephone conference with the parties on Tuesday afternoon. During that teleconference, the court told the parties that it would hear oral argument on Wednesday, April 17, at 12:30 p.m. The court also directed the defendant to reply to the plaintiff's letter brief prior to oral argument.

During introductory remarks made during oral argument, the court indicated for the first time that it would consider the motion to dismiss as a motion for summary judgment. (D.I. 104 at 2.) The court heard argument from both parties. Although the plaintiff did not object to the court's conversion of the defendant's motion to dismiss into a motion for summary judgment, the plaintiff did state that it felt that genuine issues of fact precluding summary judgment remained. (*Id.* at 24.) After briefly adjourning the proceedings to take the arguments under advisement, the court returned to the bench and announced that it would grant the defendant's motion for summary judgment. (*Id.* at 28.) The court fully explained the reasons for its ruling. (*Id.* at 28-34.)

Presently before the court is the plaintiff's motion for reconsideration of the court's decision. The plaintiff argues that the court made a procedural error in converting the motion to dismiss into a motion for summary judgment without prior notice to the plaintiff. The plaintiff also argues that substantive errors flowed from this procedural defect, as the plaintiff was effectively prohibited from presenting evidence to support its position. The defendant argues that even if the court made a

[2] The parties agree that New York law governs this dispute.

procedural error, the plaintiff was not prejudiced by such error because the statute of frauds defense was previously raised in this case. Additionally, the defendant contends that there were no new facts the plaintiff could present that would remove this contract from the purview of the New York statute of frauds.

After reviewing the parties' submissions, the transcripts of record, and the applicable law, the court will grant the plaintiff's motion. Upon reconsideration, the court agrees that the plaintiff should have been afforded an opportunity to present any necessary facts to the court in opposition to the defendant's summary judgment motion. In order to correct this error, the court will vacate the April 17 order granting summary judgment and re-open the case. However, to balance the plaintiff's interest in presenting facts with the defendant's interest in raising the statute of frauds defense, the court will allow either party to submit a motion for summary judgment stating that it is entitled to judgment in its favor as a matter of law. In support of or in opposition to any such motion, the plaintiff will be permitted to present any necessary facts. The court will now explain its reasoning.

II. STANDARD OF REVIEW

As a general rule, motions for reconsideration should be granted only "sparingly." *See Karr v. Castle*, 768 F. Supp. 1087, 1090 (D. Del. 1991). In fact, these types of motions are only granted if it appears that the court has patently misunderstood a party, made a decision outside the adversarial issues presented by the parties, or made an error not of reasoning but of apprehension. *See, e.g., Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990) (citing *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)); *see also Karr*, 768 F. Supp. at 1090 (citing same).

In addition, the Third Circuit has explained that a district court should also grant a motion for reconsideration which alters, amends, or offers relief from a judgment when: (1) there has been an intervening change in the controlling law; (2) there is newly discovered evidence which was not available to the moving party at the time of the judgment; or (3) there is a need to correct a legal or factual error which has resulted in a manifest injustice. *See Max's Seafood Cafe by Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (relying on *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)).

Nevertheless, as the *Brambles* court made clear, motions for reconsideration "should not be used as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." 735 F. Supp. at 1240. In these situations, such a motion should be denied because any other ruling would effectively encourage parties to engage in an endless debate with the court and, thus, delay the ultimate resolution of the litigation. *See Oglesby v. Penn Mut. Life Ins. Co*., 877 F. Supp. 872, 892 (D. Del. 1994) (noting that motions for reconsideration "should not be abused to allow for a never-ending polemic between the litigants and the [c]ourt"); *Brambles*, 735 F. Supp. at 1240 ("[T]he procedural mechanism provided by the rule should not be undermined to allow for endless debate between the parties and the [court.").

III. DISCUSSION

A motion for reconsideration may be granted where there is a need to correct a legal or factual error which has resulted in a manifest injustice. *See Max's Seafood*, 176 F.3d at 677. In this case, the court made a procedural error in converting the motion to dismiss to a motion for summary judgment without providing notice to the plaintiff. Rule 12(b) of the Federal Rules of Civil

Procedure dictates that if a motion to dismiss is treated as a motion for summary judgment under Rule 56, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." FED. R. CIV. P. 12(b). Rule 56 also permits a party opposing summary judgment to present affidavits in support of its position. *See* FED. R. CIV. P. 56(c). The Third Circuit has stated that the district court's failure to provide notice to parties can constitute reversible error under certain circumstances. *See In re: Rockefeller Center Properties, Inc. Securities Litigation*, 184 F.3d 280, 289 (3d Cir. 1999). However, the failure to provide notice is harmless error if the complaint would not survive a motion to dismiss. *See id*.

The court concludes that at minimum, the plaintiff's complaint might have survived a motion to dismiss. In ruling on a motion to dismiss, the factual allegations of the complaint must be accepted as true. *See Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997); *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir.1996). Moreover, a court must view all reasonable inferences that may be drawn from the complaint in the light most favorable to the non-moving party. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Schrob v. Catterson*, 948 F.2d 1402, 1405 (3d Cir. 1991). A court should dismiss a complaint "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *See Graves,* 117 F.3d at 726; *Nami,* 82 F.3d at 65 (both citing *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957)).

A review of the plaintiff's complaint indicates that there is probably a set of facts under which the plaintiff might prevail. Although the defendant has raised the statute of frauds as a defense, in both its April 16 letter brief and the April 17 oral argument, the plaintiff stated that there may be a set of facts under which the statute of limitations defense would be inapplicable. Since the court concludes that there is a set of facts under which the plaintiff could prevail and therefore

survive a motion to dismiss, the court concludes that the conversion of the motion to dismiss into a motion for summary judgment without notice to the plaintiff was not harmless error.

The defendant contends that the plaintiff suffered no prejudice as a result of the court's conversion because the statute of limitations issue had previously been introduced into the case. The court agrees that the statute of limitations defense was raised well before the April 17 oral argument. However, the plaintiff does not request reconsideration because the issue was newly presented at oral argument. The basis for the plaintiff's request is that the court's conversion of the motion to dismiss into a motion for summary judgment without prior notice deprived the plaintiff of the opportunity to present its version of the facts to the court. The defendant has not cited any authority stating that the plaintiff does not have the right to such notice or the right to present facts prior to the entry of summary judgment. Moreover, even if the statute of frauds issue was known to the plaintiff, it was raised anew a mere three days before trial. Given the fact that the plaintiff had such a short period of time in which to defend the motion to dismiss and the fact that the court only told the plaintiff at the beginning of oral argument that it would convert the motion to dismiss, it is unfair to conclude that the plaintiff had a sufficient opportunity to present all facts necessary to resist the defendant's motion.[3]

[3] The court notes that the plaintiff did not raise the notice issue during oral argument and thus the notice issue could be considered waived. However, given the fact that the rapid evolution of events may not have given the plaintiff the opportunity to object to the conversion and the fact that the plaintiff did oppose the entry of summary judgment, the court finds that the plaintiff sufficiently preserved the notice issue for purposes of reconsideration.

IV. CONCLUSION

For all of these reasons, the court will vacate its April 17, 2002 order granting summary judgment in favor of the defendant and will re-open this case to permit the plaintiff to present any additional facts necessary to support its claim. However, both the plaintiff and the defendant will be prohibited from introducing new causes of action or new defenses not previously raised in this litigation.[4] Additionally, to ensure that both the plaintiff and the defendant are given a fair opportunity to fully address their claims and defenses, either party will be permitted to submit a motion for summary judgment for the court's consideration. The parties are directed to agree to a briefing schedule and submit it to the court within thirty (30) days of this order. If the court finds that the statute of frauds is inapplicable, this case will be scheduled for trial.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Plaintiff's Motion for Reconsideration (D.I. 105) is GRANTED.

2. The Court's April 17, 2002 order entering summary judgment in favor of the defendants (D.I. 101) is VACATED.

3. The parties are hereby directed to submit a stipulated summary judgment briefing schedule to the court within thirty (30) days from the date of this order.

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[4] For instance, the plaintiff's motion for reconsideration argues that the plaintiff might prevail on a quantum meruit theory. However, the plaintiff's complaint does not seek recovery based on quantum meruit - only breach of contract. At this late stage in the litigation, the plaintiff will not be permitted to pursue a cause of action which is not contained in the complaint and is therefore new to this litigation. *See Procter & Gamble Co. v. Paragon Trade Brands, Inc.,* 15 F.Supp.2d 406, 409 (D. Del. 1998) (noting that a motion for reconsideration "may not be used as a vehicle to advance additional arguments that a party could have made before judgment but neglected to do so").

4. The clerk's office shall re-open this case.

5. The defendant's motion to strike the plaintiff's reply brief (D.I. 110) is DISMISSED as MOOT.

Dated: June 12, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE